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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/003,057	11/02/2001	Koen Hendrik Johan Vrielink	NL 000571	4904
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PHILIPS INTELLECTUAL PROPERTY & STANDARDS
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BRIARCLIFF MANOR, NY 10510

EXAMINER

FLETCHER, JAMES A

ART UNIT	PAPER NUMBER
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2621

DATE MAILED: 10/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/003,057

Applicant(s)

VRIELINK, KOEN HENDRIK
JOHAN

Examiner

James A. Fletcher

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 20 and 21 is/are allowed.
- 6) ☒ Claim(s) 1-16 and 22 is/are rejected.
- 7) ☒ Claim(s) 17-19 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 17 July 2006 have been fully considered but they are not persuasive.

In re page 8, Applicant's Representative states: "Wysong does not describe primary and secondary programs transmitted in an alternating sequence, as claimed."

The Examiner respectfully disagrees. The broad language of the claim simply states that one channel has two undefined programs sent in an alternating sequence, and a third program sent in parallel to those programs. Wysong's disclosure can read on this recitation in several ways. First, as the Examiner noted in his previous office action, the sequential messages of the second subcarrier has a sequence of commercial messages that are intended for individual recipients. This sequence clearly meets the recited "alternating sequence" recited in the claim. However, the same sequence also explicitly contains an alternating sequence of commercials and address codes, further described as audio signals, which also clearly meets the recited limitation of an alternating sequence of programs.

In re page 9, Applicant's Representative states: "the applicant respectfully requests that the Examiner provide evidence to support the 'official notice' assertion regarding the claimed limitation not taught by Wysong."

The Examiner that the recited "information mode," being in quotation marks, imparts special meaning to the term, which, in broad interpretation, can mean nothing more than the tuner determining if there is a subcarrier present or not, and muting the

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discriminator's output if a subcarrier is not present, which is done each time a station is changed by the user. Such a teaching is available in Feit et al (3,573,382), Col 2, lines 1-12.

Such a determination provides the user with a functionality of providing him or her with the most fulfilling programming available on the channel, without unnecessarily adding noise to the output. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Wysong in order to cause the apparatus to automatically enter an information mode whenever the situation is changed by the user.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-9 and 22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicant's claims fail to comply with 35 USC 112, 2nd paragraph, because the meets and bounds of the claims cannot be determined. It is not clear if claim 1 is in fact reciting any steps. Ex parte Ehrlich, 35 USPQ 2nd, 1001 stated that a method claim needed active steps to meet 35 USC 112, 2nd paragraph. Claim 1 does not recite the step of "transmitting", rather says something "is transmitted". It is not clear where the method step is.

Applicants claim drafting language only further confuses the issue. For example, the language in claim 3, lines 3-5, from “is divided” in line 3 to “parallel to these programs” in line 5, substantially repeats language from claim 1. Then line 6 recites that the information is transmitted according to claim 1. But line 2 already recited a method of transmitting. Is line 6 reciting a second method? Also, as with the comment regarding claim 1 above, where are the steps in claim 3?

What are the steps in method claim 10? The limits of claim 19 cannot be determined. Line 1 recites that the claim depends on claim 17, which itself depends structure of claim 16. Line 3 of claim 19 refers to a method, and line 8 refers to the method of claim 1. Are these methods the same? Dependent claims can refer back in the alternative to multiple claims. It doesn't appear claim 19 is depending on multiple claims in the alternative. Additionally, it isn't clear whether the normal, pause, and resume modes in claim 19 the same modes recited in claim 17? If so, why are they repeated since claim 19 is supposed to depend on claim 17?

In claim 22 is “an information mode” the same as the information mode in claim 20? The language would imply not, but is that true?

The examiner requests applicant to carefully review all of the claims so that the limits of each claim is clear and the limits of any patent protection, if any claims are eventually granted, is clearly evident.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 2, 8-9, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Wysong (3,922,607).

Regarding claims 1, 2, and 16, Wysong discloses a method of transmitting and receiving audio information that is divided into primary, secondary, and tertiary programs, the secondary programs are transmitted in an alternating sequence and the tertiary programs are transmitted parallel to those programs (Col 3, lines 1-5 “one subcarrier is modulated with substantially continuous program material, such as background music, and another subcarrier is modulated with sequential messages, each message having associated therewith [sic] a coded address signal”)

Regarding claim 8, Wysong discloses a method of transmitting programs broadcast by a radio transmitter (Col 2, line 68 “an improved broadcasting system”).

Regarding claim 9, please see Examiner’s remarks regarding claim 1.

Further regarding claim 9, Wysong discloses a method of transmitting programs that comprise commercials (Col 1, lines 60-63 “a second subcarrier generator, at a different frequency, is modulated with a second program, such as commercial messages”).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 10-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wysong.

Regarding claim 10, Wysong discloses a mode where the selected program terminates after a time (Col 1, lines 65-68 "The second subcarrier also contains a signal which causes the receiver to revert back to normal programming once a particular message has concluded"), but is silent on the mode being initiated by a user.

The Examiner takes official notice that user intervention is notoriously well-known, commercially available, and widely used on a variety of equipment, allowing a user to have the equipment perform the actions the user prefers or desires at the time the user prefers or desires it.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Wysong in order to include a user-initiated mode.

Regarding claim 11, Wysong discloses the secondary information is transmitted parallel to the primary information (Col 1, line 51 "Two subcarriers are used").

Regarding claim 12, please see Examiner's remarks regarding claim 8.

Regarding claim 13, please see Examiner's remarks regarding claim 9.

Regarding claim 14, please see Examiner's remarks regarding claim 1.

Regarding claim 15, Wysong is silent on digitally encoding of the information.

The Examiner takes official notice that digital encoding of audio and video information is notoriously well known, commercially available, and widely used,

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providing users and providers with a robust, high quality, reliable means of transmitting information.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Wysong to digitally encode the program information.

Allowable Subject Matter

8. Claims 17-19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Regarding claims 17-19, the prior art discloses several information streams consisting of sequential programs and a parallel program, as analyzed and discussed above. The prior art does not disclose the use of a buffer for intermediate storage of a stream not being played while the other stream is being played.

9. Claims 20 and 21 are allowed.

Regarding claims 20 and 21, please see Examiner's remarks regarding claims 17-19 above.

The Examiner notes that Hite et al (6,002,393), referred to as Beauregard, was cited in the PCT report as an X reference against claims 20-22. The Examiner feels that this reference is misapplied, because it does not fairly disclose, teach, or suggest the information in each channel being divided into primary and secondary information as recited in claim 20. Rather, Hite et al disclose a parallel program that is only one type of information, that being commercials.

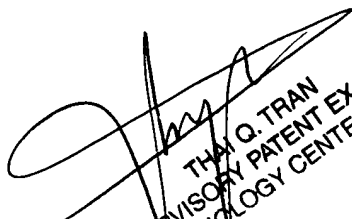
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James A. Fletcher whose telephone number is (571) 272-7377. The examiner can normally be reached on 7:45-5:45 M-Th, first Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Groody can be reached on (571) 272-7950. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JAF
18 September 2006


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